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Does prison labour rehabilitate, punish, discipline or exploit a traumatised and racialised population in Australian and American prisons?

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Key points of interest

- Many incarcerated people have histories of trauma, which is compounded by the trauma of deprivation of liberty and, in some circumstances, ill-treatment while imprisoned.
- One of the objectives of prison labour is rehabilitation of criminalised and incarcerated people. However, this article argues that prison labour is often exploitative and fails to impart marketable skills or engender self-confidence. It is thus at odds with an objective of rehabilitation through assisting currently and formerly incarcerated people, including those who are victim-survivors of trauma, to secure livelihoods to support themselves and their families.
- The article draws parallels between the rehabilitative needs of victim survivors of torture and criminalised survivors of trauma, to recommend a strengthening of legal protections around prison labour and a pivot to healing and empowerment of incarcerated people.

Abstract

This article describes the incarcerated population in Australia and the US as being comprised of people primarily from racialised and marginalised communities, of whom many have histories of trauma. It is argued that their pre-existing trauma is compounded by trauma arising from both deprivation of liberty in and of itself, and their treatment and conditions in prison. The article compares and draws parallels between rehabilitation as understood under the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with rehabilitation as an objective of the criminal legal system, arguing for the need for the criminal legal system to refocus from reducing reoffending to pursuing healing. The article argues that contemporary prison labour in Australia and the US should be analysed in the context of historical slavery and forced labour. It considers the different objectives of prison labour, concluding that it is not feasible to effectively achieve multiple objectives (e.g. rehabilitation versus recouping State costs associated with incarceration). The significant risk that prison labour as it currently operates can amount to exploitative or degrading treatment is explored in the article, which argues that international legal protections need to be strengthened. The article also recommends that there needs to be improved transparency and research regarding the use and effectiveness of prison labour in these jurisdictions (and more broadly) in achieving rehabilitation, particularly livelihoods in the community, after release from prison.

Keywords: prison labour; trauma; rehabilitation; criminogenic factors; labour rights.

*** Aboriginal and/or Torres Strait Islander people are warned that the names of deceased Aboriginal people are included in this article.***

Introduction

Prison labour in Australia and the US ostensibly has many objectives, including supporting incarcerated people's rehabilitation by increasing their employability upon their release. However, a narrow understanding of what rehabilitation entails for a traumatised and racialised prison population, and serious shortcomings in international legal protections for incarcerated people who work, limits the potential of prison labour to be an avenue for healing and empowerment. There needs to be a shift away from categorising incarcerated people as being inherently 'less deserving' victim-survivors of trauma (as discussed below, many incarcerated people have, indeed, histories of trauma) than those victim-survivors who have avoided becoming entangled in the criminal legal system. Adopting this alternative approach would support the requisite reforms to facilitate prison labour being a means of successfully integrating livelihoods into rehabilitation following trauma, including the trauma caused by criminalisation and incarceration.

Is there a 'right' type of victim? The parallels between the rehabilitative needs of victim survivors of torture and criminalised survivors of trauma

This article argues that parallels can be drawn between the rehabilitative needs of survivors of torture and incarcerated people who are survivors of trauma, particularly with regards to the role that livelihoods can play in achieving rehabilitation. This article proposes that there are lessons for the criminal legal system in the rehabilitative approach to victim survivors of torture. There will, of course, also be circumstances where there is some overlap between these two groups; for example, where criminalised survivors of trauma have been tortured during police interrogations.

Arguably, a key reason for the difference in the underlying ethos in the approach to supporting criminalised victim survivors of trauma is that so-called 'criminals/perpetrators/offenders' do not, in the eyes of society, fit Christie's characterisation of an ideal victim: "a person or category of individuals, who... most readily are given the complete and legitimate status of being a victim" (Christie, 1986, p. 18). The deeply entrenched stigma and lack of empathy for incarcerated people is a significant obstacle to rehabilitation. There should be a move away from this false delineation between the 'right' type of victim survivor of trauma and the 'wrong' type (those who are convicted of crimes). This entails centring healing and empowerment of criminalised individuals who have histories of trauma, and addressing society's structural shortcomings (e.g. lack of housing, healthcare, and access to work and education) that contribute to people being criminalised in the first place. As Mulcahy explains

> the focus of penal policy and practice should be recalibrated to put healing at the centre of relationships and interventions, assisting 'unrecovered trauma survivors' with offending behaviour to make better sense of themselves and their multiplicity of personal struggles... to pursue their vision of a good life (Mulcahy, 2019, p.6).

Part of healing and leading a good life is being able to financially support oneself and one's family. This is a key reason why there needs to be a reckoning with the current, and as this article argues, deeply flawed approach to prison labour.

However, this article is not endorsing the use of deprivation of liberty as a vehicle for achieving rehabilitation (including through the use of prison labour). There are inherent limitations to achieving rehabilitation within the confines of a prison. Rather, the article explores how protections for incarcerated people may be strengthened, within the current limitations of the criminal legal system, to better achieve the goal of rehabilitation through securing livelihoods, including through drawing lessons from the approaches to the rehabilitation of survivors of torture and ill-treatment.

The need to strengthen legal protections for working incarcerated people

While some protections of incarcerated workers can be found in the *UN Standard Minimum Rules for the Treatment of Prisoners* ('the Mandela Rules') and other human rights instruments, this article primarily focuses on the *Forced Labour Convention, 1930 (No. 29)* ('the Labour Convention'). Importantly, the Labour Convention excludes from the definition of forced or compulsory labour

> any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations (Article 2(2)).

However, even where prison labour may not *technically* meet the international legal definition of compulsory or forced labour (or it does, but there is a failure to properly categorise it as such), this article argues that often prison labour in some

countries, like Australia, amounts to 'coerced labour', if not 'forced labour' under international law. In these circumstances there is a high risk of exploitation, which is fundamentally at odds with rehabilitation.

The over-representation of racialised and marginalised communities in Australian and US prisons, and thus, in prison labour

Any analysis of prison labour must address the fact that, in the US and Australia, overwhelmingly, incarcerated people come from racialised and marginalised communities. The International Labour Organisation (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) has clearly stated that, even if the offence which is being punished by imprisonment does *not* come under the protection of the *Abolition of Forced Labour Convention, 1957 (No.105)* , "if the penal punishment [prison labour] is meted out more severely to certain groups defined in racial, social, national or religious terms, and this punishment involves compulsory labour, the situation is in violation of Article 1(e) of the Convention" (which states that "[e]ach Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour as a means of racial, social, national or religious discrimination"). In the US, African Americans are incarcerated at 4.8 times the rate of white Americans (Nellis, 2021, p. 6). In recognition of this overrepresentation, the CEACR has requested that the USA:

> continue to provide information on the measures taken or envisaged, both in law and in practice, to identify and reduce racial and ethnic disparities in the criminal justice system to ensure that punishment involving compulsory labour is not meted out more severely to certain racial and ethnic groups (CEACR, 2021).

Granted, the US position on prison labour is particularly alarming, with the 13th Amendment providing for a prohibition of slavery and involuntary servitude "except as a punishment for crime whereof the party shall have been duly convicted." However, the gap in international legal protections, which risk undermining State efforts of achieving rehabilitation through prison labour, disproportionately impact on racialised communities in other countries too. For instance, in 2022-2023, 32.5% of the prison population in Australia was Aboriginal and Torres Strait Islander. In contrast, at 30 June 2021, Aboriginal and Torres Strait Islander people in Australia represented only 3.8% of the total Australian population (ABS, 2023).

A traumatised, racialised and marginalised prison population

Pre-existing trauma

Furthermore, many of the world's incarcerated people have histories of trauma (to be distinguished from histories of torture, as defined under the UN *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), and other forms of ill-treatment at the hands of State authorities). For example, a study in Wales found that 80% of interview participants were exposed to an Adverse Childhood Experience (ACE), a "traumatic or stressful [experience] occurring before the age of 18 years". Almost half had experienced four or more. ACEs include maltreatment (verbal, physical and sexual abuse and emotional and physical neglect), and household ACEs (parental separation, mental illness, domestic violence, alcohol abuse, drug use, incarceration). In the USA, "over 90% reported at least one ACE and 50% reported four or more ACEs" (Ford et al, 2019, p. 4). The UN Special Rapporteur on Torture reported that many incarcerated women are "victims of horrific domestic and sexual violence" (Edwards, 2023, [14]), a finding that is reflected in the Australian context as well, with studies concluding that 70-90% of incarcerated women have a history of emotional, sexual or physical abuse (ANROWS, 2020, p.5). A US study found that 44% of incarcerated women had post-traumatic stress disorder (PTSD) (Centre for Women's Justice, p. 6). Mulcahy explains that it "is likely that the majority of men and women in any given prison, anywhere in the world, are unrecovered trauma survivors. Their offending behaviour is only one of many incapacitating symptoms of their dysregulated stress response system" (Mulcahy, 2019, p.8). The imprisoned population also has a high incidence of mental ill-health. For example, in a study by the Australian Institute of Health and Welfare (AIHW), 51% of prison entrants (63% for women) reported a mental health condition at some stage in their lives (AIHW, 2023, p.44), and 21% reported a history of self-harm (AIHW, 2023, p.52).

While it is well-established that many people in prisons have pre-existing histories of trauma, particular attention should be paid to Indigenous peoples, who have experienced decades of destructive State policies ranging from genocide, including massacres (Colonial Frontier Massacres, Australia) and removal and institutionalisation of children, to protectionism and assimilation. In Australia, a legacy of colonisation is intergenerational trauma and an overrepresentation of Aboriginal and Torres Strait Islander people in prison (AIHW, 2023, p.137). The watershed Australian *Bringing Them Home Report*, which focused on the Stolen Generation (Aboriginal children

removed from their families pursuant to government policy between the mid-1800s to the 1970s (Healing Foundation)), stated that

> [s]eparation and institutionalisation can amount to traumas. Almost invariably they were traumatically carried out with force, lies, regimentation and an absence of comfort and affection. All too often they also involved brutality and abuse. Trauma compounded trauma'.

The trauma of incarceration

Then there is the trauma of incarceration, which can come from the individual's deprivation of liberty *in and of itself*, as well as the treatment and conditions in detention. The deprivation of liberty can have wide-reaching negative impacts on those who are imprisoned, including an inability to care and provide for dependants (2 in 5 Australian prison entrants reported having dependent children in the community (AIHW, 2023, p.vii)), loss of custody of children, and disconnection from Country and culture (the UN Subcommittee on Prevention of Torture has recommended that Indigenous people be placed in prisons near their communities (SPT Annual Report, 2013, [89] (f), (g), (h) and (i)). Even the eventual release from prison can be a traumatic event (AIHW, 2023, p. 137).

Trauma pre-existing incarceration and trauma resulting from deprivation of liberty in and of itself may then be compounded by harmful practices and conditions in prisons. Such practices are well-documented around the world, in many cases rising to the level of ill-treatment and even torture. For example, an Aboriginal woman, who is a victim survivor of sexual assault, who was forcibly strip searched in an Australian Capital Territory prison, described her experience as follows:

> At this time, I was menstruating heavily due to all the blood thinning medication I take on a daily basis. Here I ask you to remember that I am a rape victim. So you can only imagine the horror, the screams, the degrading feeling, the absolute fear and shame [I] was experiencing' (Lachsz, 2023, p. 37).

In the coronial inquest into the death in custody of Veronica Nelson, a proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman who died in Victoria's women's prison, Dame Phyllis Frost Centre, the Coroner found that, in relation to her opioid withdrawal, "the treatment she received constituted cruel and inhumane treatment" (Finding into death with inquest, 2023, [417]). Particularly for women who are victim survivors of domestic and family violence, their experiences in prisons can replicate those they have previously experienced, as prisons are "built on an ethos of power, surveillance and control" (ANROWS, 2020, p. 5).

Thus, the trauma arising from criminalisation and imprisonment can find its origin in the myriad knock-on effects, arising from deprivation of liberty in and of itself, in 'the unavoidable level of suffering inherent in detention'(e.g. *Shylokov and others v Russia* (2021) [70]), and, in some circumstances, conditions and treatment that rise to the level of ill-treatment or even torture at the hands of the State.

Does rehabilitation in prison address people's trauma or 'criminogenic factors'?

Despite significant numbers of incarcerated people having histories of trauma and abuse at the hands of non-State actors prior to imprisonment (histories that have often contributed to their involvement in the criminal legal system), and, in some cases, having been subjected to conditions and treatment in detention (including police custody and prisons) that may amount to torture or ill-treatment (or that may not meet the requisite legal thresholds, but still cause harms that traumatise), there is a significant divergence in approaches to rehabilitation for torture survivors and criminalised trauma survivors.

Yet there are lessons for the criminal legal system in the UN CAT's approach to rehabilitation, given the parallels between the rehabilitative needs of survivors of torture and of criminalised survivors of trauma (who, at times, also then become survivors of torture and ill-treatment, inflicted on them while incarcerated). A shift in the criminal legal system from a risk-management model to one of healing would benefit all, including better supporting the legal system's objective of community safety. Healing should be centred in the different mechanisms by which rehabilitation is pursued, including prison labour practices.

Rehabilitation centring healing and empowerment

Under Article 14 of the UN CAT, States Parties are required to "ensure in [their] legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible." In General Comment 3, the UN Committee against Torture (the Committee) stated that

> [r]ehabilitation refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical,

> mental, social and vocational ability; and full inclusion and participation in society', including vocational training (UN CAT, 2012, [11], [12]).

Crucially, members of the International Rehabilitation Council for Torture Victims (IRCT) have included employment and economic security in the definition of torture victims' quality of life (IRCT, 2020). There is a clear recognition of the need for a holistic approach to rehabilitation for torture victim survivors, in which individuals' basic needs are met, rather than focusing solely on medical or psychosocial support. A holistic approach recognises that people have

> households to feed... often battling against the unemployment and disability directly caused by the torture they have suffered. Put simply, if basic needs like food, sanitation or proper housing – the outcomes of poverty – are not addressed by our member centres as they treat survivors, rehabilitation is unlikely to succeed (IRCT, Livelihoods).

Rehabilitation centring reducing the risk of reoffending

In contrast, in the context of the criminal legal system, the focus of rehabilitation is on reducing reoffending, increasing reintegration (UN General Assembly Resolution, 2021) and improving community safety (UNODC handbook, 2018, p. 3), with "the period of imprisonment... used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life." This preparation includes offering work (Mandela Rules, Rule 4). The 'essential aim' of the criminal legal system is the individual's "reformation and social rehabilitation" (*International Covenant on Civil and Political Rights* (ICCPR) Art 10(3)). This almost invariably entails a deficit approach, rather than a strengths-based approach, with a focus on addressing criminogenic needs (the "risk factors associated with recidivism" - which are not necessarily causal (UNODC, 2018, p. 22-23)). Yet this approach has been criticised:

> the almost exclusive focus on direct criminogenic factors can overlook a holistic and formulation led consideration of an individual's life experiences and as a consequence may be unable to offer therapeutic support for important aspects of an individual narrative (for example, adversity, discrimination, trauma) (Taylor, 2012, p. 201-3).

It is clear that there is some overlap in the rehabilitation stratagems for torture survivors and criminalised survivors of trauma (even if there is a very different underlying ethos), in that both ostensibly seek to address people's basic needs, such as housing and employment (or a means of income, including welfare payments; although this paper focuses instead on work and employment). In Australia, 46% of people entering prison reported they had been unemployed during the 30 days before prison. This figure was 57% for Aboriginal and Torres Strait Islander people (AIHW, 2023, p. 76). 43% were homeless in the four weeks prior to imprisonment (AIHW, 2023, p.80), and 48% expected to be homeless upon release (AIHW, 2023, p. 81).

The focus on addressing the 'criminogenic factors' of criminalised, incarcerated survivors of trauma, rather than healing and empowerment (in stark contrast to the approach for survivors of torture), has normalised underpaid (or even 'volunteer') work by incarcerated people. Justifications include claiming that underpaid/unpaid prison labour is central to rehabilitation, or that it is simply a reprieve from mundane prison life. And while some incarcerated people actively seek underpaid/unpaid work while in prison, that should not be used as a reason to limit their rights as workers in such an extraordinary manner.

The ambiguity regarding whether the purpose of prison labour is commerce, punishment, discipline or rehabilitation

Shackled to the history of slavery, forced labour and exploitation of racialised and colonised communities

An analysis of contemporary prison labour practices in the US and Australia cannot be undertaken in a vacuum, but rather should account for historical practices of slavery and forced labour, particularly of racialised and incarcerated people. The US's history of slavery and forced labour is well known, and many commentators have linked historical practices to contemporary prison labour. Le Baron explains that "[j]ust as in historic systems of prison labour, the economic logic of prison labour is inseparable from its cultural and social logics" (LeBaron, 2018, p. 169).

After the American Civil War and the end of chattel slavery, some of the Southern states established 'Black Codes', enabling ongoing access to cheap labour. Although the statutes were, on their face, not targeted at racialised people, the conduct that was criminalised (such as loitering, breaking curfew, vagrancy, being unemployed, failing to carry proof of employment, living together out of wedlock, and not having a permanent residence) disproportionately impacted on African American people. In fact, after the end of slavery, the Louisiana prison population was, for the first time, majority African American. (Whitehouse, 2017, p. 94-5; VOTE 2023, p.8-9). As Pehl

notes, "[c]onvicts were a cheap and pliant labor pool... [private enterprises] discovered they had a vested economic interest in maintaining a steady stream of law-breaking bodies to risk in hazardous occupations' (Pehl, 2019, p. 78). In a current matter before the courts in the US regarding the conditions of prison labour, the complainants stated that "[l]ike chattel slavery before it, convict leasing was brutal. But unlike enslaved people, who were considered an investment, Black prisoners were considered expendable" (VOTE 2023, p.8-9).

In the US, there were different types of convict leasing. The prison could maintain the care of the incarcerated people, while leasing them out to work on railroads, mines, and private plantations (VOTE 2023, p.8-9). With much of the infrastructure in the South destroyed during the war, states claimed they were unable to accommodate incarcerated people, and so entered into lease agreements whereby state prisons leased out convicts to private enterprises for a small fee, on the condition that those enterprises housed and fed them (Whitehouse, 2017, p. 95). Northern States also used prison labour, but through a contract system whereby the labour was carried out in the prison itself (e.g. Sing Sing prison) (Pehl, 2019, p. 80).

The legacy of this history persisted with the Jim Crow laws resulting in African American people continuing to be incarcerated at greater rates (VOTE 2023, p.8-9). In 1915, President Wilson urged States to end the use of convict labour, portraying it as incompatible with a civilised society, but the responses were varied. In the 1930s, with fewer jobs available in the community, there was increased resistance to incarcerated people working (Pehl, 2019, p. 81). The American Federation of Labor (a federation of unions) characterised "the state-use system as fair and humane" (this system was one in which goods were produced by incarcerated people for the prisons or other State agencies) but were opposed to the sale of prison products on the free market (Pehl, 2019, p. 91-92). Then, in the US in the 1970s, there was a political shift to 'law and order' approaches, and at the same time, private for-profit entities were given access to the labour of incarcerated people (Pehl, 2019, p. 94-5; LeBaron, 2018, p. 164-5).

Australia's history of exploiting Aboriginal and Torres Strait Islander people for their labour is not as well-known as America's history. The *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) described how, in the past, Aboriginal people were paid in tobacco, tea and rations, and were "forced to move onto reserves, and to work for government authorities" (RCIADIC, 1991, 10.8.1, 10.8.2). When people were paid in cash, part of the payment had to be made to the Protector in trust, and Aboriginal people had to ask permission to make purchases other than with the pocket money they were paid (RCIADIC, 1991, 10.8.10). Aboriginal children were taken from their parents to be domestic servants and rural apprentices. They were required to perform the most menial and poorly paid occupations for employers not of their own choosing. If they left employment, they were punished, sometimes in juvenile detention centres, while their exploitation as cheap labour was justified as 'uplift' and 'civilisation' (RCIADIC, 1991, 10.8.15). Children were indentured from 1897 to 1970 (RCIADIC, 1991, 2.16), and as late as 1969, workers in Aboriginal communities were paid in rations and pocket money instead of wages (RCIADIC, 1991, 2.28). At the end of 2023, there was a $180m settlement from the Western Australian Government for stolen wages (Murphy, 2023), and there is currently a class action before the courts in the Northern Territory (Mackay, 2023), which has recently reached a $202m settlement (Houlbrook-Walk, 2024). And Australia, like the US, has a history of using chain gangs in prisons ('[s]till neck-chained, the native prisoners work outside on the roads' (Roth, 1901, p. 19)).

Australia was not the only colony to exploit the labour of colonised people. For example, in "Spanish America, prisoners sentenced to hard labour by the colonial courts were also leased to private employers who used them in mines, manufactures, and mills" (Guido, 2019, p. 2). In fact, "it was clear from the preparatory work that the [Labour] Convention had grown out of international concern over slavery and so-called 'native labour' in colonies" (ILO, 1999).

A contemporary view of prison labour as having a rehabilitative purpose

The contemporary understanding of prison labour often focuses on a rehabilitative objective, to reduce the risk of further offending "by teaching [incarcerated people] marketable skills which they can use to find and retain employment upon release," the oft cited challenge being insufficient work opportunities or programs for imprisoned people (UNODC, 2017, p.13-14, 16). There are, however, significant, entrenched impediments to achieving this goal of rehabilitation.

On one view of prison labour, the criminal system's rehabilitative goal might be achieved by assisting incarcerated people to "learn the habit of working", since "many offenders have never been successful in securing or holding jobs in the free world" (LeBaron, 2018, p. 170). This conceptualisation of prison labour as assisting incarcerated people to make a *choice* to be 'productive citizens' is certainly not a new one (Pehl, 2019, p. 77). However, this approach, focused on addressing incarcerated people's imagined moral failings, rather than on teaching useful vocational skills and providing opportunities to gain the sort of experience that will assist people to obtain employment upon

their release, warrants caution, and perhaps even cynicism. As Whitehouse, considering the US context, notes

> [t]his deceptive trope, also known as the "culture of poverty myth", completely discounts the true underlying reasons for minority poverty in America, such as the legacy of slavery and institutionalized racism, and instead posits that impoverished and particularly minority Americans end up in prison because they prefer a life of crime to getting a job (Whitehouse, 2017, p. 93).

The focus should shift away from blaming incarcerated people to addressing individual needs (e.g. unhealed trauma), providing opportunities to learn marketable skills that are in demand, and addressing systemic and structural barriers to employment (e.g. lack of stable housing, stigmatisation of criminalised people and racism).

Prison labour as a commercial enterprise

Prison labour is seen by some governments as an opportunity to recoup the significant costs of incarcerating people, with States taking advantage of cheap prison labour to deliver State services, a means by which to ensure prison operations (delivering both goods and services), or as a means of making a profit (by either the State or private entity) (White, 1999, p247).

Despite assumptions that it is mainly private companies which benefit from prison labour, it is often State or public entities which are the most common clients, such as hospitals and courts (Neves, 2015, p. 29). For example, in California, incarcerated firefighters reportedly save the state $1 billion per year (being paid $2 per day, as opposed to the $34.44 paid per hour to non-incarcerated firefighters (LeBaron, 2018, p. 168-9)). In Australia, incarcerated people undertook warehousing operations to distribute personal protective equipment across Victorian prisons during the pandemic (Corrections Victoria, 2021). Prison labour has been proposed as a means by which to cover labour shortages, such as picking fruit on Australian farms during the pandemic, when there were international border restrictions (Sakkal, 2021) (and UK labour shortages for meat suppliers, following Brexit (Mantouvalou, 2021); this is not a uniquely Australian or US phenomenon).

Disappointingly, union resistance to the meagre wages of incarcerated workers has focused on the rights of workers in the community, rather than solidarity with incarcerated people working in prisons. Products produced in prisons, being sold at lower market prices due to cheap (or free) prison labour, have long been perceived as unfair competition for those entities that employ free workers (Prison Labour: II, 1932, p. 506). It was an issue raised by free workers and labour unions in the depression in the US from the 1870s – 1890s, during which incarcerated people in the north produced what would be valued today at $35 billion worth of goods (Pehl, 2019, p. 78-79). More recently, the Australian Council of Trade Unions (ACTU) appealed to the ILO, having received complaints that prison labour (production of horse blankets) was threatening local employment (White, 1999, p. 246). The focus of the ACTU was on small and medium sized enterprises being unable to compete with prison wages which "were sometimes ten times lower than in normal companies" (ILO, 1999).

The juxtaposition of union priorities with the experiences of incarcerated workers is exemplified by the account of an incarcerated person in Tasmania, Australia

> [f]ifty metres from where I am writing this letter, a hundred men are locked inside a dark and noisy factory punching holes in pieces of metal which will go towards making ping-pong tables and chalk boards to be sold at K-Mart and other major retail chains; the same retailers who made a public spectacle of burning furniture made by Chinese forced prison labour (White, 1999, p. 246).

Prison labour cannot effectively serve multiple purposes simultaneously

There are other potential purposes of prison labour, additional to those discussed above. Since the 1770s, prison work has been perceived as a means by which to address idleness (Simon, 1999, Chapter 1, p. 2), improve prison atmospheres (UNODC, 2017, p. 16-19), and keep incarcerated people occupied and more compliant with prison rules. Prison labour has been seen as a way that incarcerated people can 'give back' to the community through public works (White, 1999, p. 247), and making financial contributions to victims' compensation (Neves, 2015, p. 10). Prison labour has been used for both discipline (it is "intrinsically useful, not as an activity of production, but by virtue of the effect it has on the human mechanism... Penal labour must be seen as the very machinery that transforms the violent, agitated, unreflective convict into a part that plays its role with perfect regularity" (Foucault, 1977)) and as a deterrent by way of "hard, boring and monotonous work" (White, 1999, p. 247), although it is a well-established ethos of the criminal legal system that people are sent to prison *as* punishment, not *for* punishment. Earning a wage while in prison is also a means by which incarcerated people can pay for prison services and goods (such as phone calls), although this raises broader questions regarding the appropriateness of people in prison being required to cover (often exorbitant) costs of their incarceration, especially given the low wages

that people generally earn. Clearly, some of these many purported objectives are complementary, but others are entirely at odds.

The question as to whether prison labour can, in fact, effectively serve a multiplicity of purposes is a fundamental one. An evaluation in Victoria, Australia, concluded that

> The effectiveness of the Prison Industries is marred by competing objectives and changing priorities. Sometimes Ministers... want the Prison Industries to generate income, at other times they desire better rehabilitation/training and at other times they are primarily concerned with keeping prisoners occupied (Buchanan, 2007, p. 3).

Ultimately, Buchanan recommended that there be "less preoccupation with generating as much revenue as possible in the short run to offset the cost of managing the prison population" (Buchanan, 2007, p. 8).

Prison labour, if it exists, should have an objective of rehabilitation, to be achieved through people accessing meaningful livelihoods, both during and after their incarceration. Pursuing multiple objectives (some of which are arguably on ethically precarious ground) should not be permitted where this would negatively impact on the incarcerated person's rehabilitation.

Some forms of contemporary prison labour may amount to cruel, inhuman or degrading treatment or punishment

While not the focus of this article, it is important to note that there are circumstances where contemporary prison labour may amount to cruel, inhuman or degrading treatment or punishment (or even to torture). That is not to say that all prison labour is inherently torturous, but some of the jobs incarcerated people are given, and the conditions in which they work, are, arguably, inherently degrading.

Despite the international frameworks suggesting otherwise, coerced prison labour can be characterised as inherently degrading, especially in circumstances where there are sanctions additional to loss of access to meagre incomes for refusing to work. In the US, for example, ""[a]ggravated" work offenses include disobeying repeated instructions as to how to perform work assignments (even if the instruction makes a person unsafe)," leading to disciplinary measures including solitary confinement and loss of privileges such as personal phone calls and family visits (VOTE 2023, p. 14).

There are also instances where the work that incarcerated people undertake is unskilled, monotonous, dangerous or demeaning. For example, a class action before the Louisiana courts details the following:

> Plaintiffs are forced to hoe, dig, and weed for hours, sometimes without access to clean drinking water. Breaks are uncommon. Shade and sanitary toilet facilities are nearly unheard of. Despite the availability of modern agricultural machinery, Plaintiffs and class members are forced to pick plantation crops by hand or use outdated tools, without training or standard protective gear (VOTE 2023, p. 12-13).

The plaintiffs also describe how many daily tasks assigned to incarcerated men on the Farm Line are designed to enforce powerlessness. For instance, Plaintiffs and class members have been forced to dig and refill holes. Some must "goose-pick," or pull blades of grass by hand. Others must water crops using a Styrofoam cup. This definitionally pointless labor—extracted under threat of further punishment and serious harm—is humiliating and degrading. It is arbitrary and traumatic. An exercise of power, the Farm Line systematically treats Plaintiffs and class members as deserving of little, if any, dignity (VOTE 2023, p. 15).

The plaintiffs allege that their working conditions may amount to cruel and unusual punishment (VOTE 2023, p. 35-37). There are other examples of treatment that could amount to cruel, inhuman or degrading treatment. In the Arizona prison labour program, the practice of shackling incarcerated workers at the ankle is a clear example of "state-organized prison labour... [taking] a public and humiliating form" (LeBaron, 2018, p. 169). During the pandemic, despite hand sanitiser being contraband in prisons and masks not being made available to them, incarcerated people faced disciplinary action if they refused to work bottling sanitiser, making masks and face shields, or digging mass graves for victims (Dreier, 2020).

The operation and impact of prison labour could be understood through the prism of Pérez-Sales' 'torturing environments'. Pérez-Sales defines a torturing environment as

> a set of conditions or practices that obliterate the control and will of a detainee and that compromise the self [that] is formed by a set of cumulative or sequential attacks to basic needs, creating physical, cognitive and emotional exhaustion and confusion, and the interconnection of the expectations of pain with actual physical pain and actions targeted to the self. Its final purpose is to break the will of the person (Pérez-Sales, 2020, p. 339).

Of particular relevance is the impact of Australian and US prison labour programs, that treat incarcerated people as unworthy of meaningful and dignified work, on criminalised trauma victim survivors' sense of identity.

Livelihoods as a road to rehabilitation: Strengthening protections against exploitation of incarcerated people

In circumstances where prison labour is blatantly exploitative or inherently degrading, any purported rehabilitative objective for incarcerated people, many of whom have histories of trauma, cannot be achieved. However, there are concrete steps that can be taken to strengthen protections not only for incarcerated people in the US and Australia, but for the 11.2 million incarcerated people around the world. Taking these steps will bring rehabilitation as understood under the CAT and by the criminal legal system in closer alignment.

International and regional human rights protections

Protections against forced or compulsory labour are found in a number of human rights instruments. For example, under the *International Covenant on Economic, Social and Cultural Rights*, there are relevant rights in Article 6 (right to work), Article 7 (just and favourable work conditions), and Article 8 (rights relating to unions). There are, however, significant shortcomings in international law with regards to protections for working incarcerated people. Under the ICCPR, for instance, performance of hard labour in pursuance of a sentence to punishment by a competent court does not constitute prohibited forced or compulsory labour (ICCPR Article 8(3)(b)) (see also *European Convention on Human Rights* (Article 4), *African Charter on Human and Peoples' Rights* (Articles 5, 15) and *American Convention on Human Rights* (Article 6)). The Mandela Rules only provide for "a system of equitable remuneration", rather than the same minimum wages as workers in the community (Rule 103(1)). The shortcomings in international human rights law are then often incorporated in domestic human rights acts (e.g. *Human Rights Act 2004* (ACT) s26; *Human Rights Act 2019* (Qu) s18; *Charter of Human Rights and Responsibilities Act 2006* (Vic) s11).

There are a number of instruments that directly address prison labour. The Mandela Rules were updated in 2015, removing the *requirement* for incarcerated people to work (Milman-Sivan, 2020, p. 519). While the Mandela Rules are non-binding, countries can and should take steps to align domestic legislation with these minimum standards (and, in fact, could aim to exceed them). Of particular note are Rule 97 which requires that "[p]rison labour must not be of an afflictive nature; [p]risoners shall not be held in slavery or servitude; [n]o prisoner shall be required to work for the personal or private benefit of any prison staff," and Rule 99 that states that vocational training "must not be subordinated to the purpose of making a financial profit from an industry in the prison," and that work "shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life." The Rules also provide that prison industries should preferably not be operated by private contractors (Rule 100(1)). Rule 96(2) of the Mandela Rules requires that there be "sufficient work of a useful nature," and Rule 98 provides that "[s]o far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release," as well as for vocational training and choice regarding the type of work undertaken. The Mandela Rules also provide for occupational health and safety and indemnification (Rule 101), and regulation of working hours (Rule 102). Further protections can be found regionally (e.g. in the Basic Principles for the Treatment of Prisoners (Principle 8) and European Prison Rules (26.1 – 26.17)).

However, the Mandela Rules cement the divergence between rights of incarcerated and non-incarcerated workers, and cannot provide the protections that could, and should, be secured by an amended Labour Convention.

International labour protections

A stark failure to protect incarcerated workers: The most striking absence of labour protections can be found in the Labour Convention, which excludes some prison labour from its definition of forced or compulsory labour (which is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (Article 2(1))).

The Labour Convention permits the State to coerce labour from incarcerated people, whereas private entities are required to have the incarcerated person's consent. This absence of protection exists in a context where there has been an increase in incarcerated people working for private entities (either within the prison walls or in the community) and a trend in some countries of using privately-operated prisons (ILO, 2007, p. 59). There are many ways in which incarcerated people might work for private entities, including: "education/training to gain qualifications; produc[ing] goods or provid[ing] services for the market; work[ing] outside prison as part of pre-release scheme; contributing to the running of prisons run by private entities" (ILO, 2007, p. 61-2).

The ILO has been criticised for "persistently treat[ing] prison work for private entities with great suspicion, while effectively granting a free hand to public work providers" (Milman-Sivan, 2020, p. 506). The underlying assumption, that needs to be challenged, is that the State cannot be an "oppressive employer" that exploits incarcerated people (Milman-Sivan, 2020, p. 516). This assumption does not account for the widespread abuses that happen in prisons around the

world at the hands of State authorities. Nor does it account for the fiscal pressures which States are under, particularly in those countries where the prison population continues to increase, to recoup costs. Recouping costs by extracting labour from incarcerated people might even be characterised by some as 'fiscally responsible'.

Hiring or placing incarcerated people at the disposal of private companies: With regards to the privatisation of prison labour, the ILO has described the relationship between incarcerated workers, the public authority and the private company as normally being a triangular one; whereby the contractual relationship (relating to incarcerated workers) exists between the private company and public authority, and another direct relationship exists between the public authority and incarcerated worker. In contrast to free workers in the community, there is no direct contractual relationship between the incarcerated person and the private entity, and thus an absence of the labour law protections that normally flow from employment contracts (ILO, 2007, p. 63). In fact, the Neves study found that "most countries don't allow for the establishment of contracts between the inmates and employers" (Neves, 2015, p. 25).

The ILO has made clear "workshops which may be operated by private undertakings inside prisons, as well as to work organized by privately run prisons" runs afoul of the Labour Convention, where people are hired to or placed at the disposal of private entities (ILO, 2007, p. 62). However, determining *when* people are hired or placed at the disposal of private companies can be a difficult matter to assess, given the opacity that often accompanies these arrangements. Countries including Australia, Germany, and the United Kingdom have continually flouted the ILO's guidance, and have indicated continuing intentions to do so, in "a fundamental normative disagreement as to the regulation of prison labour" (Milman-Sivan, 2020, p. 506, 512). Milman-Sivan has characterised the status quo as "essentially a compliance rebellion against [the ILO's] prison labour policies... a legitimacy crisis" (Milman-Sivan, 2020, p. 505). Meanwhile, these States have relied on arguments that "private entities provide work opportunities that are rehabilitative and are otherwise in short supply," with benefits outweighing the risks (Milman-Sivan, 2020, p. 511-12). And so, ostensibly in pursuit of rehabilitation, States continue to expose incarcerated people to exploitation 'for their own benefit', even where these States have received expert guidance that this is in contravention of the Labour Convention.

Consenting to work for private entities: Where incarcerated people work for private entities, the Labour Convention requires their consent. However, the issue of consent is a particularly difficult one, although the ILO is of the view that it is not an insurmountable obstacle. The ILO has recommended that there be written consent (i.e. formal consent) (ILO, 2007, p. 65), that there be no loss of rights or privileges for refusing to work, and there be indicators authenticating the consent, citing the most reliable indicator as being whether the work is performed "under conditions which approximate a free labour relationship" (ILO, 2007, p. 65-6).

However, determining loss of rights or privileges is not straightforward, given that parole considerations frequently include whether the individual has participated in work programs while incarcerated. In fact, working in prison is a means by which to demonstrate the extent of the individual's 'rehabilitation', and the ILO has accepted that incarcerated people's refusal to work may result in an "unfavourable assessment of behaviour [to be] taken into account for non-reduction of sentence" (ILO, 2007, p. 65). In a coercive prison context, where refusing to work for a private entity can directly impact someone's chances of release from prison, it is arguably virtually impossible to determine whether consent was genuinely and freely given. Moreover, it is rare for work conditions for incarcerated people to approximate market conditions, particularly given the often exploitative wages paid.

Working conditions: The ILO has identified work conditions as being central to determining whether incarcerated people have given genuine consent to work for private entities. Yet this approach risks a situation where incarcerated people working for private entities may end up having better working conditions than incarcerated people who are working for the State (ILO, 2007, p. 67). Such a discrepancy would clearly be an unjust outcome, at odds with healing and rehabilitation. Addressing this inconsistency would either require that incarcerated people are never permitted to work for private entities, or that everyone in prison is afforded the same protections as each other, regardless of whether the 'employer' is a State or private entity (and from this author's perspective, ideally the same protections as free people working in the community).

The ILO has identified some of the working conditions to be taken into account in an assessment, although it has differentiated between which protections should be fully afforded to incarcerated people (occupational safety) versus those that can be compromised on (wages) (ILO, 2007, p. 65-6). The ILO has also identified some objective and measurable advantages, such as "learning... skills which could be deployed by prisoners when released; the offer of continuing the work of the same type upon their release" (ILO, 2007, p. 66).

Fair remuneration: It should be self-evident that paying incarcerated people proper wages is essential to making them feel part of society (Prison Labour: II, 1932, p. 506). If rehabilita-

tion is the primary objective of prison labour, then exploitation of incarcerated people must cease. Yet, incarcerated people are generally paid poor wages. For example, in Victoria, Australia, people are paid $6.50- $8.95 per day" (Deputy Commissioner's Instruction, 2020). People who refuse to work or are dismissed are not paid at all (Corrections Victoria, 2020, p. 5). In some states in the USA (e.g. Georgia and Texas), people are paid nothing. At the Federal level, UNICOR (the US federal prison industries) employs 22,560 incarcerated people, who are paid $0.23 - $1.15 per hour. In 2001, UNICOR made $583.5 million in sales (Prison Policy Initiative, 2019). Again, this is not an issue unique to Australia and the US; for example, in the UK, under the *National Minimum Wage Act 1998*, incarcerated workers are excluded from the national minimum pay protections if they work in the prison (including for private employers), but have protections if they work for employers outside the prison walls (Mantouvalou, 2021).

Reasons to properly pay incarcerated people are manifold: it enables them to save money that they can access upon release, it enables them to support their families while incarcerated, and it assists them to pay the, at times, exorbitant costs of living in prisons. Poor prison labour wages can increase the risk of people returning to illicit sources of income on release, "as a way to earn enough money to get by when they are shut out of the so-called legitimate workforce" (Leung, 2018, p. 697-8). Particularly where people are excluded from government benefits, the importance of having decent savings upon their release from prison is even more important for their survival (for basic necessities such as housing, food and healthcare) (Prison Policy Initiative, 2017). Being able to support their family by earning decent wages while incarcerated is also key, given that it is inevitable that families will be impacted financially by the incarceration of their family member; "infliction of suffering on persons who have had no share in the crime... may be avoided if the [person] can earn what is needed to keep [their] family while in prison" (Prison Labour: II, 1932, p. 506).

Despite the fact that detaining authorities have human rights obligations to provide services to a certain standard to incarcerated people, some detaining authorities seemingly prioritise recouping costs of incarceration, rather than meeting their obligations to the people to whom they owe a duty of care. The cost of living in prisons is frequently exorbitant, and there are often deductions made from people's pay, compounding the injustice of their meagre wages. Incarcerated people may have to pay inflated prices for "necessities like food, hygiene products, warm clothing, medications, and medical care" (VOTE 2023, p. 12-13). In 43 states in the USA, Corrections charges people room and board; in 35, people may be charged for medical treatment. In Victoria, Australia, phone calls cost between 60¢-90¢ per minute (Hall, 2023). People may also be fined as part of disciplinary action (Corrections Victoria, 2023). As Whitehouse rightly points out, in these circumstances, where there is such low pay, people "are taking on twice the economic burden" (Whitehouse, 2017, p. 99). And because prison labour often fails to teach marketable skills, wages may end up being the sole benefit of engaging in work (Prison Policy Initiative, 2017). Ultimately, fair remuneration is essential for prison work to provide the intended rehabilitative benefits.

Proper remuneration could take into account the incarcerated person's qualifications, skills and experience, as well as their progress as a worker while incarcerated. Although beyond the scope of this paper, the author anticipates resistance to a shift towards fair remuneration by those arguing that such a policy might lead to undesirable inequities where welfare payments for those unemployed in the community are insufficient. In brief response, it is suggested that an appropriate solution would be to increase welfare payments in the community so that they are adequate, rather than to persist with drastically underpaying incarcerated people.

Meaningful, tailored work and a respectful workplace

The purpose of prison labour should be more than the "prevention of idleness" or "burning time" (Buchanan, 2007, p. 5). Although one of the purported benefits of prison labour is that it develops incarcerated people's skills, Leung has described how, in the US, "the vast majority of prisoner-workers are employed in positions that have little growth potential and do not teach them marketable skills." This leads to people being "employed in low-skill positions, such as piecing together clothing for Victoria's Secret, stamping license plates, or stitching [US] flags" (Leung, 2018, p. 682-3).

It is crucial for people to be treated respectfully at work. Yet this is not always the case. In a prison labour study in England, a participant described their experience of prison labour:

> We're treated like little children.... It's degrading.... Some people don't mind it, but I do (Simon, 1999, Ch4, p. 109).

That study outlined the factors that affected whether incarcerated people tried to use a "prison-acquired skill, and whether those who tried succeeded." On that list of factors the researchers included self-image and self-confidence (Simon, 1999, p. 165). The study concluded that

> if prison work is to foster personal competence it must be work which is planned, for and with the inmate, to be

> relevant to his or her pre-sentence experience and to his or her hopes for work on release. (Simon, 1999, p. 193-194).

Livelihoods as a road to rehabilitation: Opportunities for employment upon release

Criminal records are a significant barrier to formerly incarcerated people finding work, including in their trade. While it is clear that their offending does not always impact on their ability to do the work, employers "sometimes use a criminal conviction as an indicator of an applicant's character or trustworthiness." Even some of the private entities which use prison labour (paying lower wages than to their free workers) then require a criminal history check for people to work while in the community (Leung, 2018, p. 704). As highlighted by the Irish Penal Reform Trust

> [h]igh levels of resilience should not be a prerequisite for [people with convictions] to move on with their lives and reintegrate into society but the findings on negotiating the labour market and navigating the workplace suggest that [people] will almost certainly struggle without them (Irish Penal Reform Trust, 2024, p. 28).

While legislative protections against discrimination on the grounds of irrelevant criminal records are important (*Anti-Discrimination Act 1998* (Tas) s16(q), *Anti-Discrimination Act 1992* (NT) s19(q), *Discrimination Act 1991* (ACT) s7(1)(k)), more proactive steps need to be taken to support people to get jobs, including preparatory steps while they are still incarcerated. Prisons should have measures in place to ensure that the work done by incarcerated people matches the work that is available and in demand in outside labour markets (Simon, 1999, p. 188). Organisations and programs assisting formerly incarcerated people to gain employment also need to be properly funded (e.g. Women's Chance organisation in the UK, Philadelphia's Fair Chance Hiring Initiative).

Improved transparency and better research

Prisons are, by their very nature, opaque environments, but the lack of transparency with regard to prison labour is particularly striking. For example, Australian governments have relied on contracts for operations of private prisons being 'commercial-in-confidence' as the reason for refusing to provide information, including to oversight bodies (ILO, 1999). A study of a number of countries found that "that prison administrations rarely quantify expenditure with operation costs of prison labour, making it an impossible task to calculate the profit rate of those activities" (Neves, 2015, p. 37). The lack of transparency is a risk for both corrupt practices and mismanagement, as exemplified in the UK, where "pressure to get work from prisoners had induced the workshops... to expand considerably their trade with private companies, taking on contracts which they had not the ability to manage" (Simon, 1999, Ch1, p. 9-10).

This opacity is exacerbated by the fact that prison labour is an aspect of prisons that is under-researched. However, the research that has been undertaken across a number of jurisdictions indicates that prison work is low skilled, restricted to manual activities, and has "no impact on... chances of securing employment after release" (Neves, 2015, p.11). In the Neves study, none of the countries evaluated labour reintegration (Neves, 2015, p. 31), and in an Australian study, in Victoria, the researchers highlighted that their evaluation was hindered by the lack of information (Buchanan, 2007, p. 12).

Conclusion

The considerable shortcomings in protections for incarcerated workers internationally, and persistent failure to conceptualise rehabilitation for incarcerated people as healing from pre-existing trauma and trauma resulting from their contact with the criminal legal system needs to be addressed. Strengthening international legal protections (which are then incorporated in domestic legislation in Australia and the US, with accompanying constitutional amendments for the latter (Williams, 2021)) would have the benefit of not only avoiding harms flowing from exploitative or degrading prison labour, but of providing a basis for meaningful livelihoods for incarcerated and formerly incarcerated people, supporting their rehabilitation from past traumas.

While this article has focused on the gaps and failures when it comes to prison labour, benefits of labour while in prison could flow for incarcerated people, under the right circumstances. For example, in Australia since 2011, The Torch program has "embrac[ed] program participants as artists rather than offenders,' assisting Aboriginal people to reconnect with their "culture and earn income from art sales (with 100% of the artwork price going directly to the artist), licensing and projects." Participants in the program identified benefits as including "an increased sense of well-being and confidence... pre-release skills and exploration of post-release career opportunities... [and] better relationships with family and the wider community."

As one program participant described, "[i]n the past I was a crook, you know, a jail bird, but now I am an artist. My daughter is so proud of that. I never used to think of myself that way" (the Torch website).

References

Anti-Discrimination Act 1992 (Northern Territory, Australia).

Anti-Discrimination Act 1998 (Tasmania, Australia).

Australian Bureau of Statistics. (2023). Estimates of Aboriginal and Torres Strait Islander Australians. https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/30-june-2021

Australian Government (Australian Institute of Health and Welfare). (2023). The health of people in Australia's Prisons 2022. https://www.aihw.gov.au/reports/prisoners/the-health-of-people-in-australias-prisons-2022/contents/summary

Australian Human Rights Commission. (1997). Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. https://humanrights.gov.au/our-work/projects/bringing-them-home-report-1997

Australian Productivity Commission. (2024). Report on Government Services 2023, Part C Section 8, Table 8A.12. https://www.pc.gov.au/ongoing/report-on-government-services/2023/justice

Australia's National Research Organisation for Women's Safety (ANROWS). (2020). Women's imprisonment and domestic, family and sexual violence, https://apo.org.au/sites/default/files/resource-files/2020-07/apo-nid308044.pdf

Buchanan, J. & Considine, G. (2007). From labour to work: Evaluation of, and options for, Victoria's Prison Industries. https://www.corrections.vic.gov.au/from-labour-to-work-evaluation-of-and-options-for-victorias-prison-industries

Centre for Women's Justice UK. (2022). Double Standard: Ending the unjust criminalisation of victims of violence against women and girls. https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/6241a370051da468f5ba42d3/1648468856173/DS+FINAL+REPORT.pdf

Charter of Human Rights and Responsibilities Act 2006 (Victoria, Australia).

Christie, N. (1986). The Ideal Victim. In Fattah, E.A. (Eds), *Crime Policy to Victim Policy* (pp. 17-30). London. Palgrave Macmillan. https://doi.org/10.1007/978-1-349-08305-3_2

Corrections Victoria (2020) Deputy Commissioner's Instruction: 3.03 Prison Industries. https://www.corrections.vic.gov.au/deputy-commissioners-instructions-programs-and-industry

Corrections Victoria, Corrections, Prisons & Parole. (2021). Warehouse Industry at Langi Kal Kal helping to keep the department safe. https://www.corrections.vic.gov.au/warehouse-industry-at-langi-kal-kal-helping-to-keep-the-department-safe

Council of Europe. (1950). *Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)*.

Council of Europe, Committee of Ministers. (2006). *European Prison Rules*, Recommendation Rec(2006)2-rev.

Discrimination Act 1991 (Australian Capital Territory, Australia).

Dreier, H. (2020). 'A recipe for disaster': American prison factories becoming incubators for coronavirus. https://www.washingtonpost.com/national/a-recipe-for-disaster-american-prison-factories-becoming-incubators-for-coronavirus/2020/04/21/071062d2-83f3-11ea-ae26-989cfce1c7c7_story.html

Edwards, A. (2023). Good practices in national criminalization, investigation, prosecution and sentencing for offences of torture. A/HRC/52/30.

Federal Bureau of Prisons. UNICOR Program Details. https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp

Finding into death with inquest of Nelson, Veronica (COR 2020 0021). (2023). VicCorC 28312. https://www.coronerscourt.vic.gov.au/finding-passing-veronica-nelson

Ford, K., Barton, E.R., Newbury. A., Hughes. K., Bezeczky. Z., Roderick. J., Bellis. M.A. (2019). Understanding the prevalence of adverse childhood experiences (ACEs) in a male offender population in Wales: The Prisoner ACE Survey. https://phw.nhs.wales/files/aces/the-prisoner-ace-survey/

Foucault, M. (1977) Discipline and punish: The birth of the prison.

Guido, M. (2019). Private prison labour: paradox or possibility? Evaluating modern-day systems and establishing a model framework through the lens of the Forced Labour Convention. *University College London Journal of Law and Jurisprudence* 8(2), 29-57.

Hall, B (The Age). (2023). The Christmas push to end gravy train of exorbitant prison phone calls. https://www.theage.com.au/national/victoria/the-christmas-push-to-end-gravy-train-of-exorbitant-prison-phone-calls-20231221-p5esyg.html

Healing Foundation. Who are the Stolen Generations?. https://healingfoundation.org.au/who-are-the-stolen-generations/

Houlbook-Walk, M (ABC). (2024). Federal government to pay up to $202m settlement to Indigenous workers, relatives in NT stolen wages class action. https://www.abc.net.au/news/2024-09-06/nt-indigenous-stolen-wages-class-action-commonwealth-settlement/104319936

Human Rights Act 2004 (Australian Capital Territory, Australia).

Human Rights Act 2019 (Queensland, Australia).

International Labour Organisation. *Forced Labour Convention, 1930 (No. 29).*

International Labour Organisation (CEACR). (2007). Report III (Part 1B), 96th ILC session, Eradication of Forced Labour - General Survey concerning the *Forced Labour Convention, 1930 (No. 29)*, and the *Abolition of Forced Labour Convention, 1957 (No. 105)*. https://www.ilo.org/resource/conference-paper/eradication-forced-labour-general-survey-concerning-forced-labour

International Labour Organisation (CEACR). (2008). Observation, 97th ILC session, *Forced Labour Convention*, 1930 (No. 29).

International Labour Organisation (CEACR). (2021). Direct Request, 109th ILC session, *Abolition of Forced Labour Convention, 1957 (No. 105)* - United States of America. https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4046585,102871,United%20States%20of%20America,2020

International Labour Organisation (Committee on the Application of Standards). (1999). Observations and information concerning particular countries, 87th Session, *Forced Labour Convention, 1930* - Australia. https://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-apd1.htm

International Rehabilitation Council for Torture Victims. Livelihoods. https://irct.org/livelihoods/

International Rehabilitation Council for Torture Victims. (2020). Resolution adopted by the 6th General Assembly of the IRCT. https://irct.org/wp-content/uploads/2022/05/IRCT_Global_Standards_on_Rehabilitation_of_torture_victims_2020.pdf

Irish Penal Reform Trust. (2024). The Secondary Punishment: A Scoping Study on Employer Attitudes to Hiring People with Criminal Convictions. https://www.iprt.ie/site/assets/files/7336/the_secondary_punishment_a_scoping_study_on_employer_attitudes_to_hiring_people_with_criminal_convictions_report_web.pdf

Lachsz, A. & Courtney-Bailey, P. (2023). Preventing the Torture and Ill-Treatment of Incarcerated Women: A Spotlight on Reproductive Healthcare. *International Corrections & Prisons Association*. https://files.constantcontact.com/d0a15046701/ef8ef5f5-7022-48f9-af76-f3122594552c.pdf

LeBaron, G. (2018). Prison Labour, Slavery, and the State. In Brace, L & O'Connell Davidson, J (Eds)., *Revisiting Slavery and Antislavery: Towards a Critical Analysis* (pp. 151-177). UK, Palgrave Macmillan Cham. https://doi.org/10.1007/978-3-319-90623-2

Leung, K.E. (2018). Prison Labor as a Lawful Form of Race Discrimination. *Harvard Civil Rights-Civil Liberties Law Review* 53.

Mackay, M (ABC News). (2023). Federal Court travels through Northern Territory hearing evidence in stolen wages class action. https://www.abc.net.au/news/2023-07-27/stolen-wages-hearing-in-federal-court/102652396

Mantouvalou, V. (2021). Human Rights for Working Prisoners. UK Labour Law Blog. https://uklabourlawblog.com/2021/09/08/human-rights-for-working-prisoners-by-virginia-mantouvalou/

Milman-Sivan, F. & Sagy, Y. (2020). On the International Labour Organization and Prison Labour: An Invitation to Recalibrate. *International Labour Review 159*. https://doi.org/10.1111/ilr.12182

Organisation of African Unity. *African Charter on Human and Peoples' Rights (Banjul Charter)*. 1981.

Organization of American States. *American Convention on Human Rights*. Treaty Series, No. 36, 1969.

Mulcahy, J. (2019). *Towards ACE-Aware, trauma responsive penal policy and practice*. DOI:10.13140/RG.2.2.16066.91845

Hannah Murphy, H., Marshall, A., & Tomlin, S. (ABC News). (2023). Surviving Aboriginal workers and relatives win $180m settlement from WA government for stolen wages. https://www.abc.net.au/news/2023-11-01/wa-government-settles-indigenous-stolen-wages-case/103051706

Neves, P., Reis, S. & Leitão, T. (2015). Prison Work Models Critical Review, Prison Work Comparison Framework ECOPRIS – Ecological Economics in Prison Work Administration. https://www.europris.org/file/prison-work-models-critical-review-ecopris-project/?download=1

Pehl, M. (2019). Between the Market and the State: The Problem of Prison Labor in the New Deal. *Labor: Studies in Working-Class History 16(2).*

Pérez-Sales, P. (2020). Psychological torture. In Evans, M.D & and Modvig, J *Research Handbook on Torture* (pp. 432-455). Edward Elgar Pub. https://doi.org/10.4337/9781788113960

Prison Labour: II, The employment of prisoners (1932). *International Labour Review (25*), pp. 311-331.

Prison Policy Initiative. (2017). How much do incarcerated people earn in each state?. https://www.prisonpolicy.org/blog/2017/04/10/wages/

Prison Policy Initiative. (2019). The Prison Economy. https://www.prisonpolicy.org/prisonindex/prisonlabor.html

Roth. (1905). Royal Commission on the Condition of the Natives Report (Western Australia). https://www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/Royal+Commissions+-+Report+of+the+Royal+Commission+on+the+condition+of+the+natives/$FILE/Report+of+the+Royal+Commission+on +the+condition+of+the+natives.pdf

Royal Commission into Aboriginal Deaths in Custody. (1991). https://www.austlii.edu.au/au/other/IndigLRes/rciadic/

Sakkal,P (The Age). (2021). 'Chain gang': Andrews government plan for prisoners to pick fruit shot down by farmers. https://www.theage.com.au/national/victoria/chain-gang-andrews-government-plan-for-prisoners-to-pick-fruit-shot-down-by-farmers-20210206-p5704q.html

Shylokov and others v Russia (19 January 2021), European Court of Human Rights.

Simon, F., Tumin, S. (1999) *Prisoners' Work and Vocational Training.* London, Taylor & Francis. https://doi.org/10.4324/9780203979358

Taylor, J. & Hocken, K. (2012). People hurt people: reconceptualising criminogenic need to promote trauma sensitive and compassion focussed practice. *The Journal of Forensic Practice 23(3)*. DOI 10.1108/JFP-04-2021-0015

The Torch. https://thetorch.org.au/

United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

United Nations Committee against Torture. (2012). General comment No. 3 - Implementation of article 14 by States parties. CAT/C/GC/3.

United Nations General Assembly. (2022). Crime prevention and criminal justice (Resolution adopted by the General Assembly on 16 December 2021, Seventy-sixth session Agenda item 108). A/RES/76/182

United Nations *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 26 June 1987).

United Nations *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 999 UNTS 3 (entered into force 3 January 1976).

United Nations Office on Drugs and Crime (UNODC). (2018). Introductory Handbook on The Prevention of Recidivism and the Social Reintegration of Offenders. https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Introductory_Handbook_on_the_Prevention_of_Recidivism_and_the_Social_Reintegration_of_Offenders.pdf

United Nations Office on Drugs and Crime. (2017). Roadmap for the Development of Prison-based Rehabilitation Programmes. https://www.unodc.org/documents/justice-and-prison-reform/17-05452_ebook.pdf

United Nations *Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN GAOR, 70th sess, Agenda Item

106. A/RES/70/175.

United Nations Subcommittee on Prevention of Torture (SPT). (2013). Sixth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. CAT/C/50/2.

University of Newcastle. Colonial Frontier Massacres, Australia, 1788 to 1930. https://c21ch.newcastle.edu.au/colonialmassacres/map.php

Voices of the Experienced (VOTE) et al. v. James LeBlanc et al. https://static1.squarespace.com/static/629e677355290e6e981fdaa6/t/6508731b74e8cc78e4adebd8/1695052572826/VOTE+v.+LeBlanc+Complaint.pdf (2023)

White, R. (1999). On Prison Labour. *Current Issues in Criminal Justice (11)*. https://doi.org/10.1080/10345329.1999.12036163

Whitehouse, M.R. (2017). Modern Prison Labor: A Reemergence of Convict Leasing under the Guide of Rehabilitation and Private Enterprises. *Loyola Journal of Public Interest Law (18)*.

Williams, N. & Merkley, J.M. (2021) Congressman Nikema Williams and Senator Jeff Merkley Introduce Abolition Amendment to End "Slavery Clause. https://nikemawilliams.house.gov/posts/congressman-nikema-williams-and-senator-jeff-merkley-introduce-abolition-amendment-to-end-slavery-clause